IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6154 OF 2006

Ambadas Ambaji Kudkyal .... Petitioner
Vs.
The State of Maharashtra & Ors. .... Respondents

Shri R.P. Sabhan for the Petitioner.

Shri P.M. Patil, AGP, for the Respondent Nos.1 and 2.

Shri Y.R. Naik for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: SEPTEMBER 18, 2006

P.C:

1. The petitioner is claiming the amount of interest for the period during which there was a stay granted by this Court for disbursement of such amount on account of certain challenges thrown by the respondent No.3 to the circular issued by the Government in relation to the payment of such charges. The said stay was granted in Writ Petition No.3373 of 1993.

2. Few facts relevant in the matter are that the petitioner had conducted statutory audit of the respondent-society for the year 1992-93 and had submitted his bill to the tune of Rs.95,238/-. It was the claim of the petitioner that the said bill was in

accordance with the revised audit fees charges scales prescribed under the order dated 15-5-1992 of the Commissioner and Registrar of Co-operative Societies, Pune. The respondent No.3 in Writ Petition No.3373 of 1993 challenged the said order of 15-5-1992. While issuing rule in the said petition, though interim relief was refused, it was directed that

> "The amount, if realised and paid to the Government, is ordered to be refunded back in case the petition is allowed. The Court may consider grant of interest to the Petitioners in accordance with law. So far as Chartered Accountants are concerned, they will be paid at the old rates till the petition is decided. They will, however, be entitled to difference, in case the petition is rejected."

3. The writ petition came to be disposed of with the direction to the respondents therein, who are also the respondent Nos.1 and 2 herein, to reconsider the matter pertaining to revision of scales of audit fees charged to the Co-operative Societies which was the subject-matter of the order dated 15-5-1992 and the circular dated 4-6-1992 within six months from the date

of the order i.e. 20-1-2003 and till the decision was taken by the respondents and communicated to the petitioners in the said writ petition, who are the respondent No.3 herein, the interim order passed on 23-2-1993 while issuing the order was directed to remain in operation. Thereafter the respondents re-examined the matter, however decided to uphold the Government audit fees circular dated 15-5-1992. The petitioners thereupon intimated the said order of 17-2-2003 to the respondent No.3-society and requested for payment of the audit fees along with interest thereon at the rate of 15% per annum for the period from 6-9-1993 till 17-3-2005. As no such fee was paid, the present petition was filed.

4. It is the contention of the petitioner that in terms of the decision of the Apex Court in **Style (Dress Land) v. Union Territory, Chandigarh and another,** reported in (1999) 7 SCC 89, the respondents are liable to pay interest to the petitioner during the period for which they had obtained stay from the Court in relation to the said amount.

5. The Apex Court in **Style (Dress Land)'s** case (supra) had held that

"It is a settled principle of law that

> as and when a party applies and obtains a stay from the court of law, it is always at the risk and responsibility of the party applying. Mere passing of an order of stay cannot be presumed to be the conferment of any additional right upon the litigating party."

Further reiterating the decision in **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.,** reported in (1992) 3 SCC 1, it was held that

> "The order of stay granted pending disposal of a case comes to an end with the dismissal of a substantive proceeding and it is the duty of the court in such cases to put the parties in the same position they would have been but for the interim orders of the court."

Undisputedly, the petitioner was a party to the proceedings in Writ Petition No.3373 of 1993. The said petition concluded by the order which came to be passed on 20-1-2003 with the consent of the parties. At no point of time while disposing the Writ Petition No.3373 of 1993 any right in favour of the petitioner was

reserved to claim interest on the amount claimed by the petitioner in case the respondent-authorities confirms the order dated 15-5-1992 read with the circular dated 4-6-1992 nor any such request appears to have been made by the petitioner in the said petition. No right regarding claim of interest on such amount was reserved in favour of the petitioner while disposing the said Writ Petition.

6. When the claim for interest relates to the period during which the order of stay granted by the Court in earlier proceedings remained in force, certainly the claimant has to invoke the efficacious remedy to establish such claim. Obviously, it would be for the petitioner to establish various issues in relation to such claim which would involve disputed questions of fact and it is well-settled that the writ Court cannot deal with such matters.

7. It was also sought to be argued on behalf of the petitioner that the present writ petition is an extension of the proceedings in earlier Writ Petition No.3373 of 1993. It is well-settled that once the petition is disposed of, the Court becomes functus officio in relation to the subject-matter of the petition. Merely because a party to such petition chooses to file a second petition claiming relief in the

nature of further relief in the earlier petition, that itself cannot be sufficient to construe the second petition as an extension of the proceedings in the earlier petition nor it would be a justification to entertain a second petition on such ground.

8. For the reasons stated above, therefore, there being no case made out for entertaining the petition, the same is dismissed.

(V.M. Kanade, J.) (R.M.S. Khandeparkar, J.)

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